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No. 02-9065

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In the Supreme Court of the United States

SHAKUR MUHAMMAD, aka John E. Mease,

Petitioner,

v.

MARK CLOSE,

Respondent.

On Writ Of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR RESPONDENT

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QUESTIONS PRESENTED

Whether a plaintiff who wishes to bring a §1983 suit challenging only the conditions, rather than the fact or duration, of his confinement, must satisfy the favorable termination requirement of *Heck v. Humphrey*.

Whether a prison inmate who has been, but is no longer, in administrative segregation may bring a § 1983 suit challenging the conditions of his confinement (i.e., his prior placement in administrative segregation) without first satisfying the favorable termination requirement of *Heck v. Humphrey*.

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42 U.S.C. § 1983 and 28 U.S.C. § 2254 are quoted in Petitioner's brief.

Michigan Compiled Laws (M.C.L.) 791.254:
(1) The department shall provide for a rehearing of a matter that was subject to a hearing, pursuant to this section. A rehearing may be ordered by the hearings administrator after a review of the record of the hearing. A rehearing may be held upon the request of a party or upon the department's own motion.
(2) A rehearing shall be ordered if any of the following occurs:
(a) The record of testimony made at the hearing is inadequate for purposes of judicial review.
(b) The hearing was not conducted pursuant to applicable statutes or policies and rules of the department and the departure from the statute, rule, or policy resulted in material prejudice to either party.
(c) The prisoner's due process rights were violated.
(d) The decision of the hearings officer is not supported by competent, material, and substantial evidence on the record as a whole.
(e) It is determined, based on fact, that the hearings officer conducting the hearing was personally biased in favor of 1 of the parties.
(3) A request for a rehearing shall be filed within 30 days after the final decision or order is issued after the initial hearing. A rehearing shall be conducted in the same manner as an original hearing. The evidence received at the rehearing shall be included in the record for department reconsideration and for judicial review. A decision or order may be amended or vacated after the rehearing.

* * *

M.C.L 791.255:
(1) A prisoner aggrieved by a final decision or order of a hearings officer shall file a motion or application for rehearing in order to exhaust his or her administrative remedies before seeking judicial review of the final decision or order.
(2) Within 60 days after the date of delivery or mailing of notice of the decision on the motion or application for the rehearing if the motion or application is denied or within 60 days after the decision of the department or hearing officer on the rehearing, a prisoner aggrieved by a final decision or order may file an application for direct review in the circuit court in the county where the petitioner resides or in the circuit court for Ingham county.

* * *

STATEMENT OF THE CASE

This is a civil rights action under 42 U.S.C. § 1983, brought by Petitioner Shakur Muhammad, a Michigan prison inmate,[1] against Respondent Mark Close, a Corrections Officer, alleging that Close improperly brought a prison misconduct charge against him. At all times relevant to this lawsuit Petitioner was incarcerated at the Standish Maximum Correctional Facility in Standish, Michigan.[2]

In the present case Petitioner claims that Respondent "framed" him and wrote a major misconduct ticket in retaliation for two lawsuits Petitioner had previously filed against Close and other MDOC officials. The facts underlying the present case occurred in May 1997, and Petitioner filed this lawsuit on June 2, 1998. The two lawsuits over which the alleged retaliation took place were filed approximately 30 months and 15 months, respectively, prior to the incident that is the subject of the present case.[3]

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[1] Petitioner is serving two concurrent sentences of 35 to 75 years imposed in 1990 after his convictions of assault with intent to commit murder and first-degree criminal sexual conduct.

[2] Petitioner Muhammad is currently incarcerated at the Ionia Maximum Correctional Facility (IMAX), which is the Michigan Department of Corrections' (MDOC) highest level prison and houses only those prisoners who have committed serious acts of violence while in prison or have shown themselves to be a serious management problem. Shortly after the events in this lawsuit, Petitioner severely injured two corrections officers. One officer received a neck injury and the other officer had a fractured leg, which required pins. Soon after that incident, Petitioner was transferred to IMAX, where he has remained ever since.

[3] Petitioner Muhammad filed his first lawsuit against Respondent Close and 13 others on December 21, 1994 (E. D. Mich. No. 94-CV-74936). Petitioner claimed that he was injured after a Corrections Officer named Toth backed a van in which Petitioner was riding into a parked car. Petitioner claimed that Officer Toth later wrote a "false" misconduct ticket in retaliation against him for filing a grievance against Officer Toth.

The incident took place when Petitioner and other inmates were in the dining room, also called the chow hall. Respondent and several other Corrections Officers were assigned the duty of supervising the "chow line" at the time. The chow hall is in a glass-enclosed room. Respondent was standing outside the chow hall, watching the inmates through the glass. (Deposition of Mark Close, pp. 36-41). After several minutes, Respondent noticed that Petitioner was staring at him through the glass window. Respondent gestured with his hands, palms up, as if to say, "what's wrong?" to Petitioner. Petitioner spoke, but because there was glass separating them, Respondent could not hear what Petitioner was saying so he then entered the chow hall to find out what Petitioner wanted. When Respondent entered the chow hall, Petitioner left his seat and rapidly approached him. Petitioner stood within inches of Respondent. After several seconds of this face-to-face confrontation, another officer who saw that something was about to happen came over and handcuffed Petitioner. Two officers then escorted Petitioner out of the chow hall.

After the incident, Respondent Close wrote a misconduct ticket for "Threatening Behavior." (Deposition of Mark Close, pp. 36-41). Threatening Behavior is defined in an MDOC Policy Directive as "Words, actions or other behavior which expresses an intent to injure or physically abuse another person. Such misconduct includes attempted assault and battery." (P.D. 03.03.105, Attachment B, p. 2; Jt. App. 40).

Because Threatening Behavior is a "non-bondable" offense, Petitioner was escorted to temporary administrative

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Summary judgment was granted in favor of all defendants on August 18, 1995. Petitioner filed his second lawsuit on February 23, 1996 (E. D. Mich. No. 96-CV-10053). Petitioner claimed, among other things, that the Respondent and four other defendants threatened him because of the previous lawsuit against Officer Toth. On December 24, 1996, the district court granted all defendants' motion to dismiss. (See Magistrate's Report and Recommendation, November 23, 1998; Brief Opp. Pet., App. 3a, n.1).

segregation immediately.[4] On May 27, 1997, six days after the incident, Petitioner was provided with a hearing, conducted by a hearing officer. Hearing officers in Michigan are attorneys who report directly to the Hearings Division at the MDOC's central office. M.C.L. 791.251. Hearing officers perform their duties independently from the warden and the prison staff.

In the major misconduct report (ticket, Jt. App. 54), Respondent stated that Petitioner "angerly [sic] walked toward [him] and looked very hostile." Respondent further explained that "he was in fear of being physically assaulted and or injured. [Petitioner's] face was contorted with veins bulging at his temples." Respondent described his gesture as follows: "I raised my hands up in the air and . . . kind of shrugged my shoulders as if to say 'what's wrong' but didn't say anything, and he said something to me, and I could not hear him, and so I started walking into the chow hall to see what was going on." (Deposition of Mark Close, p 37). Other witnesses supported Respondent's characterization of his movements and agreed that Petitioner was the instigator of incident. Deposition of Richard Metevia, pp 19-20, 21; Deposition of Darlene McIntire, p 23.

Petitioner Muhammad claims that Respondent Close stared at him and then made a gesture that Petitioner

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[4] For non-bondable charges, such as Threatening Behavior, an officer does not have any discretion in deciding whether to issue a ticket. "A major misconduct report shall be written if the behavior constitutes a non-bondable major misconduct charge." (Jt. App. 11, ¶ I). A prisoner charged with a non-bondable major misconduct must be confined to segregation or toplock until the hearing. (Jt. App. 14, ¶ 5). Although the term "administrative segregation" has been used throughout this litigation, the more precise term for purposes of misconduct is punitive detention. Administrative segregation involves removal from the general population and can also include segregation for the purpose of protection or because a prisoner is unmanageable in the general population as a result of being an escape risk or for some other reason. "Toplock" means that a prisoner cannot leave his cell, but is not physically moved out of the general population.

characterized as "a fighting stance."[5] (Amended Complaint, Jt. App. 67).

Even though Respondent subjectively felt threatened, an assessment shared by those officers who intervened, the hearing officer concluded that there were no "threats of physical injury or specific threats of assault" and therefore found Petitioner guilty of Insolence rather than Threatening Behavior. (Jt. App. 58). Insolence is defined as "Words, actions, or other behavior which is intended to harass, or cause alarm in an employee." (P.D. 03.03.105, Attachment B, p. 3; Jt. App. 44). Insolence is a lesser included offence of Threatening Behavior, but both are major misconducts. (Jt. App. 38, 98).

When asked at his deposition whether a different hearing officer may have reached a different result, the hearing officer stated: "More than likely, it could have been, yes. I'm sure that some Hearing Officers would have felt that this was threatening behavior." (Jt. App. 101). At his misconduct hearing Petitioner did not assert the retaliation claim that he now makes in this litigation, although he could have done so. The hearing officer's deposition makes it clear that Petitioner would have been free to raise a retaliation defense at the hearing. Evidence of retaliation would go to credibility. (Jt. App. 103).

As a consequence of his Insolence conviction, Petitioner received punishments affecting both the conditions and duration of his confinement. In addition to the 6 days of detention already served, he received seven days of detention,

[5] Interestingly, Petitioner's complaints borrow some of the language that had been used in the misconduct ticket against him, including Petitioner's claim that it was Respondent who had "his face contorted" and who was "staring angerly [sic]" at Petitioner. (Complaint, ¶ 3; Jt. App. 67). Petitioner even misspells "angerly" the same as in the misconduct ticket.

30 days loss of privileges, and loss of good time credits, which would have reduced his sentence.[6]

Michigan offers a review process for prisoners who wish to contest the result of a major misconduct hearing. M.C.L. 791.254-791.255. A prisoner may seek a rehearing within 30 days after receiving a copy of the hearing report. (P.D. 03.03.105 ¶ EE; Jt. App. 33). If the prisoner's request for rehearing is denied or if the prisoner is not satisfied with the result, then a prisoner may appeal to Michigan circuit court, which is the general trial court.[7] *Id.* at ¶ HH; Jt. App. 34. An appeal to circuit court is in the form of a Petition for Judicial Review. Although no further appeals are available as of right, the prisoner may file applications for leave to appeal in the Michigan Court of Appeals and the Michigan Supreme Court.

[6] In Michigan, good time credits are awarded monthly while a sentence is being served, M.C.L. 800.33, but "a prisoner shall not earn good time under this section during any month in which the prisoner is found guilty of having committed a major misconduct." M.C.L. 800.33(6). This statutory mandate is implemented by administrative rules, Michigan Administrative Code, R 791.5501(4) and a Department of Corrections Policy Directive, PD 03.03.105, ¶JJ; Jt. App. 35:

> A prisoner shall automatically not earn the disciplinary credits or good time which would have been earned during any month in which s/he commits a major misconduct violation which subsequently results in a finding of guilty.

Petitioner did not forfeit any previously-accumulated good time, but he lost the statutory additional days of good time that he would have accumulated during the month in which he was found guilty of the misconduct.

[7] Michigan's Prisoner Hearings Act, M.C.L. 791.255, requires a prisoner to exhaust administrative remedies (i.e., seek a rehearing) before seeking judicial review and requires that a petition for review be filed within 60 days after delivery or mailing of the Michigan Department of Corrections' final decision. There is no requirement that a prisoner still be in detention in order to challenge the misconduct conviction.

Petitioner Muhammad made no attempt to get his misconduct conviction overturned. Petitioner declined to seek a rehearing or judicial review. When asked why not, Petitioner stated: "Because I have done rehearings and judicial review of major misconducts, maybe ten, twelve tickets. And I'm convinced that that whole system don't work." (Muhammad Deposition, pp. 28-29; Jt. App. 92).

Petitioner filed his original complaint (Jt. App. 62) seeking money damages and seeking to have the misconduct charge expunged from his file because he claimed that Respondent "framed" him and "used the prison disciplinary process to retaliate." Petitioner also claimed that he sustained "43 days of unjust loss of liberty." (Jt. App. 68-69). Respondent filed a motion to dismiss and/or for summary judgment. The magistrate judge recommended denying the motion, concluding, among other things, that the favorable termination requirement of *Heck v. Humphrey*, 512 U.S. 477 (1994) did not apply. (Brief Opp. Pet., App. 1a). The district court adopted the report and recommendation. (Brief Opp. Pet., App. 36a).

Petitioner Muhammad then filed an amended complaint in which he reduced his claim of loss of liberty to six days, increased the amount of his money damages claim, and abandoned his request to have the misconduct charge expunged. (Jt. App. 70-73). On October 19, 1999, the magistrate judge appointed *pro bono* counsel for Petitioner. Significant discovery then proceeded, which focused primarily on the merits of Petitioner's retaliation claim. Respondent filed a motion to dismiss based on failure to exhaust administrative remedies as required by the Prison Litigation Reform Act. The magistrate judge recommended denying the motion. (R.68). The district court adopted the report and recommendation. (R.71).

After discovery closed, Respondent Close filed a second motion for summary judgment. The magistrate judge recommended granting Respondent's motion for summary judgment. (Brief Opp. Pet., App. 47a). The district court adopted the report and recommendation. (Brief Opp. Pet., App. 65a). The district court's ruling was based exclusively on Petitioner's failure to present sufficient evidence in support of his retaliation claim.

On appeal, Petitioner argued that the district erred when it decided that he failed to set forth sufficient evidence in support of the causation element of his retaliation claim. Petitioner argued that there were disputed issues of material fact that should have precluded summary judgment. Respondent argued that the determination of insufficient evidence was correct and also presented alternative arguments supporting the judgment: that Petitioner failed to establish all of the elements of a retaliation claim, that Petitioner's claim implies the invalidity of his underlying major misconduct violation and is subject to the favorable termination requirement, and that Officer Close was entitled to qualified immunity.

The Court of Appeals affirmed the district court's judgment, but on different grounds. Although the basis for the district court's decision was that Petitioner failed to offer sufficient evidence to defeat summary judgment, the Court of Appeals referred to Petitioner's original complaint and affirmed on the basis that *Heck v. Humphrey* barred Petitioner's claim because he requested that the misconduct charge be expunged from his file. (Brief Opp. Pet., App. 72a-73a). Petitioner filed a petition for rehearing in the Court of Appeals, which was denied in an unpublished order on November 14, 2002. (Brief Opp. Pet., App. 74a). Petitioner then filed a petition for a writ of certiorari. On June 16, 2003, this Court granted certiorari, limited to two issues.

SUMMARY OF THE ARGUMENT

1. The Court granted certiorari in the present case on two specified issues in order to examine whether the favorable termination requirement of *Heck v. Humphrey*, 512 U.S. 477 (1994) applies to inmates challenging *only* the conditions imposed as a result of a misconduct proceeding, and not the fact or duration of confinement. Petitioner Muhammad, however, received a punishment for prison misconduct (loss of good time credits) that affected the duration as well as the conditions of his confinement (punitive detention and loss of privileges). He could have pursued administrative and State court remedies under available Michigan procedures, and he could have pursued federal habeas corpus, but he did neither. Instead he brought a 42 U.S.C. § 1983 action alleging improper motivation in bringing the misconduct charge. The nature of that claim necessarily calls into question the authority of prison officials to punish him at all, and therefore necessarily implies the invalidity of his misconduct proceeding.

Because Petitioner's punishment affects the duration of his confinement and because the nature of his § 1983 claim necessarily implies the invalidity of the misconduct proceedings, this cases falls squarely within the favorable termination requirement of *Heck* and *Edwards v. Balisok*, 520 U.S. 641 (1997). The judgment of the Court of Appeals affirming summary judgment for Respondent should be upheld without reaching the questions on which this Court granted certiorari.

2. Even where a prison misconduct punishment does not affect the duration of confinement, the favorable termination requirement of *Heck* applies to a § 1983 action that necessarily implies the invalidity of prison misconduct hearing proceedings, regardless of the punishment imposed. The requirement is a condition precedent to maintaining such a § 1983 action because of the nature of the cause of action and

consideration of other appropriate statutes and weighty policies. When the misconduct punishment affects the duration of confinement, the most appropriate consideration is the availability of the federal habeas corpus statutes. When the punishment involves only the conditions of confinement, other appropriate considerations include the limited nature of limitations on the constitutional rights of prison inmates; concerns for prison management and deference to prison officials, particularly in the volatile context of misconduct proceedings; analogies to similar common law tort actions; the protections afforded to inmates in misconduct proceedings; and the availability of administrative and State law remedies. Because a civil § 1983 action challenging a prison misconduct proceeding is essentially a collateral attack on the determination of guilt, significant concerns for consistency and finality are also present.

In the present case Petitioner Muhammad's asserts, in effect, that Respondent Close committed the constitutional violation of choosing the wrong misconduct charge for activity that Petitioner now concedes violated prison rules. His current claims necessarily challenge the validity of his misconduct proceedings in which his rights were fully protected by the procedures articulated in *Wolff v. McDonnell*, 418 U.S. 539, 563-572 (1974). He could have pursued administrative review and review by the State Courts under available Michigan procedures, but he chose not to. He could have challenged his deprivation of good time credits in federal habeas corpus, but he chose not to. Instead he seeks money damages in a Civil Rights Act lawsuit that has consumed extensive resources by State officials and the federal courts. This case required more than 3 ½ years of litigation in the District Court with extensive discovery and three lengthy reports by the Magistrate Judge and opinions by the District Judge before finally concluding that there was no merit to the claims; another year in the Court of Appeals; and has now reached the highest court in the land. All this because an inmate asserts that a prison guard had a

grudge against him and he received six days in detention, a claim that does not even rise to the level of a constitutionally protected liberty interest, *Sandin v. Connor,* 515 U.S. 472 (1995).

The lofty purposes of the Civil Rights Act should not be trivialized in this manner. Applying the favorable termination requirement to these proceedings is fully consistent with the purposes of § 1983, when considered in light of the weighty policies involved in prison misconduct proceedings.

3. The favorable termination requirement is based upon the purposes of § 1983 viewed in the context of other statutes such as 28 U.S.C. § 2254, and weighty policies like the limitations on the types of constitutional litigation available to prison inmates, the nature of prison misconduct proceedings, the procedural protections available in such proceedings and the type of review available. Where the inmate's challenge to a prison misconduct proceeding necessarily implies the invalidity of the proceeding, the favorable termination requirement applies, regardless of the nature of the punishment imposed and regardless of the inmate's status at the time he seeks to assert his claim. The administrative review and State court judicial review that Michigan provides are available regardless of whether the inmate is still in punitive detention when review is sought. Because punishment is often only temporary, review does not depend on whether the inmate is current serving the punishment.

ARGUMENT

When a prisoner seeks to challenge the conditions of his confinement in an action under 42 U.S.C. § 1983, there are three possible scenarios. First, the challenge (such as a claim concerning medical care or the severity of a punishment) may not necessarily imply the invalidity of misconduct proceedings. If so, the favorable termination requirement *of Heck v. Humphrey*, 512 U.S. 477 (1994) and its progeny is simply not at issue and a § 1983 action may be available. That is not the situation in the present case, where the punishment imposed was imposed as a result of a misconduct proceeding and the challenge necessarily implies the invalidity of that proceeding. Second, with respect to punishment imposed at a misconduct proceeding that affects the duration of confinement (such as a loss of good time credits), a federal habeas corpus remedy may be available. A challenge that necessarily implies the invalidity of such a misconduct proceeding is subject to the favorable termination requirement. That was the situation in *Edwards v. Balisok*, 520 U.S. 641 (1997) and is also the situation in the present case. For the reasons explained in Argument I, Respondent submits that this case is indistinguishable from *Edwards* and the favorable termination requirement applies.

The third scenario, and apparently the one contemplated by the questions on which certiorari was granted, is punishment that affects only the conditions of confinement (such as punitive detention) and not the duration of confinement, so that federal habeas corpus relief is not available. For the reasons explained in Arguments II and III, Respondents submit that a § 1983 challenge that necessarily implies the invalidity of such a misconduct proceeding is also subject to the favorable termination requirement.

I. Petitioner's § 1983 Claim Necessarily Implies The Invalidity Of His Prison Misconduct Proceedings And His Punishment Involves The Duration Of His Confinement, So The Favorable Termination Requirement Applies.

A. The Favorable Termination Requirement Applies When A § 1983 Claim Necessarily Implies The Invalidity Of Prison Misconduct Proceedings That Resulted In Punishment Affecting The Duration Of Confinement.

In *Heck v. Humphrey*, 512 U.S. 477 (1994), an inmate brought a 42 U.S.C. § 1983 lawsuit seeking money damages against a state prosecutor and investigator, alleging that they had engaged in an unlawful investigation, had destroyed exculpatory evidence, and had caused unlawful evidence to be used at his trial. This Court discussed the principle enunciated in *Preiser v. Rodriguez*, 411 U.S. 475 (1973), that even though a claim may come within the literal terms of § 1983, "habeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release" and applied it to a claim for money damages. 512 U.S. at 481. The Court said that "when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." 512 U.S. at 487. This has become known as the "favorable termination requirement," 512 U.S. at 486-87:

> We hold that, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254.

The majority opinion relied heavily on an analogy to the common law tort of malicious prosecution, but the concurring opinion of Justice Souter and three other Justices rejected that heavy reliance and would instead have based the decision on different grounds, largely because of concern that individuals who could not bring a federal habeas corpus action might be deprived of any federal forum. 512 U.S. at 500.

The favorable termination requirement was made applicable to prison disciplinary proceedings in *Edwards v. Balisok*, 520 U.S. 641 (1997) where a prisoner challenged the procedures used at a disciplinary proceeding at which he was found guilty and received punishment of disciplinary confinement and loss of good time. Even though the prisoner's amended complaint specifically left out any request for the restoration of lost good time credits, this Court examined "the nature of the challenge to the procedures," 520 U.S. at 645, and concluded that "[t]he principal procedural defect complained of by respondent would, if established, necessarily imply the invalidity of the deprivation of his good-time credits." 520 U.S. at 646. The Court therefore held that the prisoner's "claim for declaratory relief and money damages, based on allegations of deceit and bias on the part of the decisionmaker that necessarily imply the invalidity of the punishment imposed, is not cognizable under § 1983." 520 U.S. at 648.

In *Spencer v. Kemna*, 523 U.S. 1 (1998) this Court considered another aspect of the favorable termination requirement. The Court held that a habeas corpus petition challenging a parole revocation became moot when the petitioner completed the entire term of imprisonment underlying the parole revocation. In reaching that decision the Court considered petitioner's argument that his petition was not moot, in part because he was foreclosed from bringing a 42 U.S.C. § 1983 money damage action challenging the revocation by the favorable termination requirement of *Heck*. In an opinion joined by eight Justices the Court rejected that argument for two reasons. First, because petitioner's argument "is a great *non sequitur*, unless one believes (as we do not) that a § 1983 action for damages must always and everywhere be available." 523 U.S. at 17. Second, because it is not certain that a § 1983 damages claim would be foreclosed: "If, for example, petitioner were to seek damages for using the wrong procedures, not for reaching the wrong result, . . . and if that procedural defect did not necessarily imply the invalidity of the revocation, then *Heck* would have no application all." 523 U.S. at 17 (citation and internal quotation marks omitted).

A concurring opinion by Justice Souter, joined by three other Justices, said that *Heck* did not bar such a § 1983 claim since an individual who was not "in custody" and therefore could not bring a habeas corpus action nevertheless "may bring a § 1983 action establishing the unconstitutionality of a conviction or confinement without being bound to satisfy a favorable-termination requirement that it would be impossible as a matter of law for him to satisfy." 523 U.S. at 21 (opinion of Souter, J., concurring). Justice Stevens was the sole dissent in *Spencer*, but his opinion indicated that he agreed with Justice Souter's analysis of *Heck*. 523 U.S. at 25, n 7. Justice Ginsberg, who had been in the majority in *Heck*, wrote a concurring opinion in *Spencer* indicating that she now believed that Justice Souter's analysis, rather than the *Heck* majority's analysis, was correct. 523 U.S. at 21-22.

B. Petitioner's Misconduct Proceedings Resulted In Loss Of Good Time Credits That Affected The Duration Of His Confinement.

The varying majority, concurring, and dissenting opinions in *Heck*, *Edwards*, and *Spencer* generated confusion concerning the applicability of the favorable termination requirement. The Court granted certiorari in the present case on two specified issues in order to examine whether the favorable termination requirement applies to inmates challenging only the conditions imposed as a result of a misconduct proceeding, and not the fact or duration of confinement. Petitioner asserts that a judgment in his favor would not "necessarily imply the invalidity" of his misconduct determination. If he is correct the favorable termination requirement of *Heck* simply does not apply. He is not correct, however, because the nature of his challenge is such that it *does* necessarily imply the invalidity of the misconduct determination, and the fact remains that his punishment included a loss of good time credits that affect the duration of his confinement. Because he is challenging the duration of his confinement, and his challenge implies the invalidity of the misconduct proceeding, this case is indistinguishable from *Edwards* and the same result should obtain. See Respondent's brief in opposition to the petition for certiorari, p. 7.

Petitioner Muhammad's amended complaint does not explicitly seek restoration of lost good time credits, and it does not explicitly seek removal of the misconduct from his record. In an effort to avoid the favorable termination requirement, he even goes so far now as to admit his guilt of the offense (Insolence) for which he was found guilty and assert that he is challenging only the loss of liberty for the six days of detention while awaiting his hearing. Pet. Brief at 42. While that is his current litigation posture, he did not take that position in the hearing itself. He entered a plea of "not guilty" to the charge

of Threatening Behavior (Major Misconduct Report, Jt. App. 57) and his conviction of the lesser included offense of Insolence was based on the facts, not on a guilty plea or plea bargain. In recommending denial of Respondent's first motion to dismiss, the Magistrate Judge appears to have accepted Petitioner's characterization and concluded that *Heck* was "inapplicable." (Report and Recommendation, Brief Opp. Pet., App. 23a-28a, 32a.) If Petitioner is correct that his claim does not "necessarily imply the invalidity" of his misconduct determination, then the favorable termination requirement of *Heck* does not apply, and the questions posed by this Court are not relevant. Summary judgment on the merits was appropriate and should be upheld.

Petitioner's characterization of the circumstances is not correct however. He would have this Court view the six days of pre-hearing detention as though it is completely unrelated to the underlying misconduct charge and hearing determination. It cannot be viewed in such artificial isolation, however. The challenge to the pre-hearing detention is not a free-standing attack on prison conditions generally; the detention would not have occurred but for the attendant misconduct proceedings and it cannot be divorced from them. This lawsuit is, in effect, a collateral attack on his misconduct conviction. The six days of pre-hearing detention was part of the sentence imposed by the Insolence conviction. Michigan hearing officers are permitted to give credit for time spent in segregation pending hearing. (Jt. App. 31, ¶ Y). Petitioner was sentenced to seven days of detention *in addition* to the six that he had already served. (Jt. App. 58). Thus, Petitioner's sentence as the result of his Insolence conviction was really thirteen days of total detention, loss of privileges, and loss of good time credits

C. Petitioner Is Subject To The Favorable Termination Requirement Because His § 1983 Claim Necessarily Implies The Invalidity Of His Misconduct Proceeding That Resulted In Punishment Affecting The Duration Of His Sentence

Respondent has never contended that the favorable termination requirement applies to challenges to prison conditions generally, and does not make that contention now. But the requirement does apply to challenges implying the invalidity of misconduct determinations that affect the duration of confinement, *Edwards, supra*, 520 U.S. 641, and that is the situation here. The essence of his claim is that Respondent had an unlawful motive--retaliation--in charging him with *any* offense. If he is correct, he should have suffered no detention, no loss of privileges, and no loss of good time credits. As with the allegations of misconduct by the prosecutor and investigator in *Heck*, and the allegations of deceit and bias on the part of the decisionmaker in *Edwards*, "[t]he . . . defect complained of by [Petitioner] would, if established, necessarily imply the invalidity of the deprivation of his good-time credits." 520 U.S. at 646.

Petitioner Muhammad, like the inmate in *Edwards*, received a punishment of disciplinary confinement *and* loss of good time, see p. 5-6, and "the nature of [his] challenge" involves the duration of his confinement and "necessarily [implies] the invalidity of the judgment." *Edwards*, 520 U.S. at 645. The present case is indistinguishable from *Edwards* and the same result should be imposed.

Petitioner could have filed an administrative and state-court appeal from his misconduct decision, but he chose not to. Similarly, he could have filed a habeas corpus petition challenging the deprivation of his good time credits since that punishment affected the duration of his confinement, but he did

not. In *Wolff v. McDonnell*, 418 U.S. 539, 547 (1974) this Court described two kinds of misconduct punishments: "The first is the forfeiture or *withholding of good-time credits, which affects the term of confinement*, while the second, confinement in a disciplinary cell, involves alteration of the conditions of confinement." (Emphasis added.) *Wolff* relied on *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973), and held that because inmates who sought restoration of good time credits were "challenging the very fact or duration of their confinement and were seeking a speedier release, their sole federal remedy was by writ of habeas corpus." 418 U.S. 554. See also, *Superintendent, Massachusetts Correctional Institution v. Hill*, 472 U.S. 445, 454 (1985)("Where a prisoner has a liberty interest in good time credits, the loss of such credits threatens his prospective freedom from confinement by extending the length of imprisonment.").

Because a federal remedy was available to Petitioner, under the majority and concurring opinions in *Heck*, *Edwards*, and *Spencer*, Petitioner was subject to the favorable termination requirement, regardless of whether the requirement would apply to an inmate who does not have a remedy in federal court. Therefore the judgment of the Court of Appeals affirming summary judgment in Respondent's favor should be upheld.

II. The Favorable Termination Requirement Is A Condition Precedent To Maintaining A 42 U.S.C. § 1983 Action That Necessarily Implies The Invalidity Of A Prison Misconduct Proceeding, Regardless Of The Punishment Imposed.

The favorable termination requirement applies to § 1983 challenges that necessarily imply the invalidity of prison misconduct proceedings that result in punishment that affects the duration of confinement, because of the nature of the cause of action and because of the availability of federal court relief under another federal statute. *Edwards, supra*. The favorable termination requirement should also apply in such challenges even when the punishment does not affect the duration of confinement. This is because of the nature of the cause of action and because even if another statutory federal court remedy is not available, weighty policies are involved in the context of prison misconduct proceedings that militate against permitting such a challenge in a § 1983 action.

A. The Ostensible Scope Of § 1983 Is Limited By Other Statutes And Weighty Policies.

On its face, 42 U.S.C. § 1983 is very broad, applying to "every person" acting under color of State law who subjects another to "the deprivation of any rights" secured by the Constitution and laws. It is indisputable, as Petitioner asserts at p. 16 of his brief, that the purpose of § 1983 was "to interpose the federal courts between the States and the people, as guardians of the people's federal rights – to protect the people from unconstitutional action under color of state law . . . ." *Mitchum v. Foster*, 407 U.S. 225, 242 (1972). Such broad statements of purpose, however, are not helpful in determining whether particular actions are within its scope.

Section 1983 only provides a remedy and does not itself create any substantive rights, *Chapman v. Houston Welfare Rights Organization*, 441 U.S. 600, 617-618 (1979). Decades of this Court's jurisprudence demonstrate significant limitations on its ostensible scope. This Court has rejected the argument that a remedy is available under § 1983 to right all wrongs. *Spencer, supra,* 523 U.S. 1, 17 (1998)("This is a great *non sequitur*, unless one believes (as we do not) that a § 1983 action for damages must always and everywhere be available."). The scope of § 1983 has been limited "for the sake of honoring some other statute or weighty policy." *Id.*, at 20 (1998)(Souter, J., concurring).

A clear example of a statute limiting the scope of § 1983, of course, as recognized in *Heck*, *Edwards*, and *Spencer*, is in the interplay between § 1983 and the habeas corpus statutes, 28 U.S.C. §§ 2241, 2254. For challenges to the fact or duration of confinement, the sole remedy is a writ of habeas corpus, even though a civil lawsuit under § 1983 would otherwise seem to be available. *Preiser v. Rodriguez*, 411 U.S. at 489 ("The broad language of § 1983, however, is not conclusive of the issue before us. The statute is a general one, and, despite the literal applicability of its terms, the question remains whether the specific federal habeas corpus statute, explicitly and historically designed to provide the means for a state prisoner to attack the validity of his confinement, must be understood to be the exclusive remedy available in a situation like this where it so clearly applies.") Similarly, although § 1983 contains no statute of limitations, policies of repose require the importation of such limits, *Wilson v. Garcia*, 471 U.S. 261, 271 (1985)("A federal cause of action 'brought at any distance of time' would be 'utterly repugnant to the genius of our laws.' *Adams v. Woods,* 2 Cranch 336, 342 (1805).")

Examples of honoring "weighty policies" and not just specific statutes are shown in this Court's treatment of immunities. "Although the statute on its face admits of no

immunities, we have read it in harmony with general principles of tort immunities and defenses rather than in derogation of them." *Malley v. Briggs*, 475 U.S. 335, 339 (1986). This Court has held that absolute immunity protects many public officials, and sometimes even private citizens, when performing a qualifying government function. *See, e.g., Pierson v. Ray*, 386 U.S. 547, 553-54 (1967)(judges)[8]; *Imbler v. Pachtman*, 424 U.S. 409, 410 (1976)(prosecutors); *Tenney v. Brandhove*, 341 U.S. 367, 378-79 (1951)(legislators); *Nixon v. Fitzgerald*, 457 U.S. 731, 744-758 (1982)(President of the United States); and *Richardson v. McKnight*, 521 U.S. 399, 417 (1997)(grand jurors). And even when absolute immunity is not applicable, public officials will be entitled to qualified immunity when "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

The clear effect of this Court's jurisprudence is that the ostensible broad scope of § 1983 is limited by other statutes and weighty policies.

B. 42 U.S.C. § 1983 Only Permits Limited Causes Of Action In The Context Of Prisoners And Prison Misconduct Proceedings

Petitioner asserts, Brief, pp. 14-15, that there are only two exceptions to the § 1983 remedies "broadly available to prisoners": the need to harmonize federal habeas corpus and the exhaustion requirement of the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e(a). That broad statement, however, is contradicted by decades of this Court's

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[8] Michigan hearing officers are entitled to absolute immunity, since the relevant Michigan "statutory provisions indicate that the hearing officers are in fact professional hearing officers in the nature of administrative law judges." *Shelly v. Johnson*, 849 F.2d 228, 230 (6th Cir. 1988).

jurisprudence. As noted by Petitioner, this Court did not formally recognize that a prisoner could even state a claim under § 1983 until its decision in *Cooper v. Pate*, 378 U.S. 546 (1964). (Brief for Petitioner, p. 17). This Court has recognized that "[w]hen § 1983 was enacted, it is unlikely that Congress actually foresaw the wide diversity of claims that the new remedy would ultimately embrace." *Wilson*, *supra*, 471 U.S. at 275. But the wide diversity of claims is not without limit, particularly in the contexts of prisoners and prison misconduct proceedings.

Although "[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution," *Turner v. Safley*, 482 U.S. 78, 84 (1987), "imprisonment carries with it the circumscription or loss of many significant rights." *Hudson v. Palmer*, 468 U.S. 517, 524, 530 (1984)("prisoners have no legitimate expectation of privacy and . . . the Fourth Amendment's prohibition on unreasonable searches does not apply in prison cells"). "The curtailment of certain rights is necessary, as a practical matter, to accommodate a myriad of 'institutional needs and objectives' of prison facilities, *Wolff v. McDonnell*, [418 U.S. 539, 555 (1974)], chief among which is internal security, see *Pell v. Procunier*, [417 U.S. 817, 823 (1974)]." *Id.*, 468 U.S. at 524. "Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights," *Pell*, 417 U.S. at 822 (quoting *Price v. Johnston*, 334 U.S. 266, 285 (1948)). There can be no dispute that inmates retain many of the protections of the First Amendment, such as rights to free expression, *Thornburgh v. Abbott*, 490 U.S. 401, 407 (1989); to petition the government for the redress of grievances, *Johnson v. Avery*, 393 U.S. 483 (1969); and to free exercise of religion, *O'Lone*, 482 U.S. at 348. But even "[i]n the First Amendment context . . . some rights are simply inconsistent with the status of a prisoner," *Shaw v. Murphy*, 532 U.S. 223, 229 (2001), and a prisoner retains only those rights "that are not inconsistent with his status as a prisoner or with the

legitimate penological objectives of the corrections system." *Pell*, 417 U.S. at 822; *Turner*, 482 U.S. at 95.

Certain actions are not permitted under § 1983. Prisoners who allege medical malpractice will be without a federal remedy. "[A] complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). Prisoners alleging simple battery will also be without federal remedy. "Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates a prisoner's constitutional rights." *Hudson v. McMillian*, 503 U.S. 1, 9 (1992). Rather, a prisoner alleging excessive force is required to show that the officer's actions were done "maliciously and sadistically for the very purpose of causing harm." *Whitley v. Albers*, 475 U.S. 312, 320-21 (1986). Even a prisoner's right of access to the courts is strictly limited. Although prisoners have the right to file direct appeals from convictions, habeas petitions, and § 1983 actions, the right "does not guarantee inmates the wherewithal to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip-and-fall claims." *Lewis v. Casey*, 518 U.S. 343, 355 (1996). If a prisoner seeks to file a lawsuit that falls outside the narrow class of protected litigation, then he is without a federal remedy.

The scope of § 1983 has been limited in cases where a prisoner's constitutional rights conflict with prison management. This Court has long recognized a "policy of judicial restraint regarding prisoner complaints," *Procunier v. Martinez*, 416 U.S. 396, 406 (1974). Once a prisoner is lawfully convicted and incarcerated, prison officials are entitled to substantial deference in discharging their duties. "[C]ourts are ill equipped to deal with the increasingly urgent

problems of prison administration and reform," and "[w]here a state penal system is involved, federal courts have...additional reason to accord deference to the appropriate prison authorities." *Procunier*, 482 U.S. at 405. This Court has granted prison officials significant latitude in setting policy. In *Turner v. Safley*, 482 U.S. 78, 89 (1987), this Court held that "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." In other words, an impingement on a prisoner's constitutional rights will *not* be actionable if reasonably related to legitimate penological interests even though a similar action taken against a free citizen *may* be actionable. "We must accord substantial deference to the professional judgment of prison administrators, who bear a significant responsibility for defining the legitimate goals of a corrections system and for determining the most appropriate means to accomplish them." *Overton v. Bazzetta et al.*, 539 U.S. ___, 123 S.Ct. 2162, 2167 (2003)(upholding prison rules regarding visitation).

Two other decisions shed light on the nature of prison inmates' constitutional rights in the particular context of disciplinary proceedings and are relevant here. In *Wolff v. McDonnell, supra*, 418 U.S. at 557, the Court held that the Due Process Clause does not itself confer a liberty interest in good time credits, but where State law does so, and where State law provides that the credits may only be taken away for misconduct, there is a sufficient constitutional liberty interest at stake to require "those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated." There is no allegation that the required procedures were not observed in the present case, but it is important to recall the considerations the Court noted, 418 U.S. at 556, that distinguish prison misconduct proceedings from criminal trials, since "prison disciplinary proceedings are not part of a

criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply."

> Prison disciplinary proceedings . . . take place in a closed, tightly controlled environment peopled by those who have chosen to violate the criminal law and who have been lawfully incarcerated for doing so. Some are first offenders, but many are recidivists who have repeatedly employed illegal and often very violent means to attain their ends. They may have little regard for the safety of others or their property or for the rules designed to provide an orderly and reasonably safe prison life. . . . [I]n many [prisons] the inmates are closely supervised and their activities controlled around the clock. Guards and inmates co-exist in direct and intimate contact. Tension between them is unremitting. Frustration, resentment, and despair are commonplace. . . .
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> It is against this background that disciplinary proceedings must be structured by prison authorities; and it is against this background that we must make our constitutional judgments . . . . The reality is that disciplinary hearings and the imposition of disagreeable sanctions necessarily involve confrontations between inmates and authority

In *Sandin v. Connor*, supra, 515 U.S. 472, this Court reiterated the limitations on the types of causes of action available to prison inmates when it considered the § 1983 money damages claim of an inmate who had been found guilty of a prison misconduct and had received punishment of punitive detention. The Court reexamined the circumstances in which a State might create a liberty interest, and rejected an earlier approach that "has led to the involvement of federal

courts in the day-to-day management of prisons, often squandering judicial resources with little offsetting benefit to anyone." 515 U.S. at 482. Noting that "[d]iscipline by prison officials in response to a wide range of misconduct falls within the expected parameters of the sentence imposed by a court of law," the Court concluded that misconduct detention, "though concededly punitive, does not present a dramatic departure from the basic conditions of [the inmate's] indeterminate sentence." 515 U.S. at 485. It held that "discipline in segregated confinement did not present the type of atypical, significant deprivation in which a State might conceivably create a liberty interest." 515 U.S. at 486.

Thus it is apparent that only limited causes of action are cognizable under § 1983 in the context of prisoners and prison misconduct proceedings.

C. Analogy To The Common Law Is Appropriate In Determining Whether The Favorable Termination Requirement Applies To All § 1983 Claims That Necessarily Imply The Invalidity Of Prison Misconduct Proceedings

Petitioner Muhammad claims that "the favorable termination requirement emerges solely from concerns about preserving the federal habeas corpus structure where Congress intended it to apply" and that the "single aim of the favorable termination requirement . . . is to square § 1983's expansive language with the specific exhaustion requirement of the federal habeas corpus statute in circumstances where the two clash." (Brief for Petitioner, pp. 15, 27). Just as Petitioner's view of the scope of § 1983 is too broad, his explanation of the rationale behind the favorable termination requirement is too narrow. Although *one* of the reasons for the favorable termination requirement was to avoid the collision of the habeas corpus statutes and § 1983, another basis for applying

the favorable termination requirement comes from the common law.

"Although a few § 1983 claims are based on statutory rights," *Wilson v. Garcia, supra*, 471 U.S. at 278, most involve allegations of constitutional violations, and in determining whether to permit a particular cause of action, it is appropriate to examine the common law. *Id.*, at 277 ("The atrocities that concerned Congress in 1871 plainly sounded in tort. Relying on this premise we have found tort analogies compelling in establishing the elements of a cause of action under § 1983."). Claims brought under § 1983 are therefore litigated against the background of common law. This Court has "repeatedly noted that 42 U.S.C. § 1983 creates a species of tort liability." *Memphis Community School District v. Stachura*, 477 U.S. 299, 305 (1986)(using common law to address damages in § 1983 actions).

In *Wilson*, 471 U.S. at 277, the Court was attentive to the need for national uniformity in determining the appropriate state law statute of limitations for § 1983 actions, but looked to common law analogies for the origins of the cause of action ("Among the potential analogies, Congress unquestionably would have considered the remedies established in the Civil Rights Act to be more analogous to tort claims for personal injury than, for example, to claims for damages to property or breach of contract."). In *City of Monterey v. Del Monte Dunes*, 526 U.S. 687, 715 (1999), this Court looked to the specific claim (a regulatory takings claim) when it concluded a jury trial was appropriate because the respondent's "cause of action sounds in tort and is most analogous to the various actions that lay at common law to recover damages for interference with property interests." The common law also provides guidance in developing the specific elements of individual claims brought under § 1983. This Court explained that it has "examined common-law doctrine when identifying both the

elements of the cause of action and the defenses available to state actors." *Kalina v. Fletcher*, 522 U.S. 118, 123 (1997).

Although the civil law has been the usual source for guidance, the criminal law can also provide guidance when formulating a workable rule. In *Farmer v. Brennan*, 511 U.S. 825, 837 (1994), this Court rejected the civil law's objective standard for deliberate indifference in favor of a subjective standard, which was more in line with the criminal law's "subjective recklessness" standard. Whether criminal or civil, this Court has sought guidance from the common law when defining the elements of specific claims brought under § 1983.

Consistent with this Court's earlier cases, *Heck* served as yet another reminder that "42 U.S.C. § 1983 creates a species of tort liability." 512 U.S. at 483. The analogy to the common law of malicious prosecution, with its favorable termination requirement, formed the basis for this Court's holding in *Heck*. Even Justice Souter's concurring opinion in *Heck* recognized that analogy to the common law is appropriate in certain circumstances. There, he felt it was necessary to "avoid collisions at the intersection of habeas and § 1983," 512 U.S. at 498. Similarly, resort to the common law is appropriate here to avoid collisions at the intersection of § 1983 and the weighty policies of "judicial restraint regarding prisoner complaints," *Procunier*, *supra*, 416 U.S. at 406.

D. The Favorable Termination Requirement Applies To All § 1983 Claims That Necessarily Imply The Invalidity Of Prison Misconduct Proceedings Regardless Of The Punishment Imposed.

The rationale for the favorable termination requirement in malicious prosecution actions is to prevent a collateral attack on the conviction itself, in order to "avoid[] parallel litigation over the issues of probable cause and guilt," to alleviate

"concerns for finality and consistency," to advance the "strong judicial policy against the creation of two conflicting resolutions arising out of the same or identical transaction," and to promote "finality and consistency." *Heck*, 512 U.S. at 484-85. Even though prison misconduct proceedings differ in many respects from criminal trials, they are entitled to respect and deference and the same concerns of finality apply.

This case, like *Heck*, most resembles malicious prosecution. Petitioner Muhammad's claim is that Respondent Close "framed" him and wrote a misconduct ticket in retaliation for filing prior lawsuits. The issue was whether Respondent intentionally committed the act of instigating a confrontation with Petitioner and then intentionally charged Petitioner with a more severe prison violation than warranted, all for the purpose of retaliating against Petitioner for exercising his First Amendment rights (filing meritless lawsuits).[9] This is essentially a malicious prosecution claim, with the motive being retaliation. Accordingly, Petitioner should be required to show that his misconduct conviction was set aside (whether or not habeas was available) before proceeding with his § 1983 action.

Respondent reiterates that he has never contended that the favorable termination requirement applies to challenges to prison conditions generally, and does not make that contention now. The favorable termination requirement applies where, as here, the prisoner's claim necessarily implies the invalidity of his misconduct proceedings. Such a rule would promote finality and prevent collateral attack. *Heck*, 512 U.S. at 484-85.

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[9] The issue of whether Petitioner was even engaged in First Amendment activity is uncertain, but that question is not before this Court. *See, e.g., Herron v. Harrison*, 203 F.3d 410, 415 (6th Cir. 2000)(concluding that filing lawsuits is "protected conduct only to the extent that the underlying claims had merit." This was based on the "actual injury" requirement announced by this Court in *Lewis v. Casey*, 518 U.S. 343 (1996)).

On the other hand, the favorable termination requirement does not apply to a prisoner whose challenge to the conditions of his confinement does not necessarily imply the invalidity of the misconduct proceeding. Challenges to the procedures used at misconduct proceedings, challenges to the nature or severity of punishment, and challenges to conditions unrelated to misconduct proceedings do not implicate the favorable termination requirement. See, *Spencer v. Kemna, supra*, 523 U.S. at 17; *Edwards v. Balisok, supra*, 520 U.S. at 649 (Ginsberg, J., concurring). For example, if a prisoner was challenging a denial of medical care that occurred while he was confined to punitive detention, the claim would not be subject to the favorable termination requirement because it would not necessarily imply the invalidity of the misconduct proceeding. Similarly, if an inmate was handcuffed to a hitching post for committing an infraction, he could challenge this as a cruel and unusual punishment under the Eighth Amendment because the challenge would not be to the misconduct proceeding itself, but to the excessive nature of the punishment imposed. *Hope v. Pelzer*, 536 U.S. 730 (2002). See, *Whitley v. Albers*, 475 U.S. 312, 320-321 (1986) (a prisoner alleging excessive force is required to show that the actions were done "maliciously and sadistically for the very purpose of causing harm"). Thus, the favorable termination requirement would apply only to cases where the challenge necessarily implies the invalidity of the misconduct conviction itself, not just the particular punishment that was imposed.

Failure to apply the favorable termination requirement to all challenges that necessarily imply the invalidity of misconduct proceedings could have the inconsistent and illogical result that a prisoner punished with several years of administrative segregation could bring a § 1983 challenge, but a prisoner who loses only one day of good time credits could not. Success on the § 1983 action would imply the invalidity of the misconduct hearing in both scenarios and there is no

reason to treat them differently. Such different treatment of essentially similar situations might even lead corrections officials to uniformly apply loss of good time credits to even very minor infractions in order to take advantage of the favorable termination requirement.

E. Application Of The Favorable Termination Requirement To § 1983 Challenges That Necessarily Imply The Invalidity Of Prison Misconduct Proceedings Is Appropriate, Given The Procedural Protections Involved In Those Proceedings And The Availability Of Alternative Methods Of Review.

This Court addressed the procedural requirements for prison disciplinary hearings in *Wolff v. McDonnell*, *supra*, 418 U.S. at 563-572. Those protections were applied in Petitioner's hearing, and deference should be accorded to the result of the hearing. By removing the favorable termination requirement from discipline hearings that do not result in a loss of good time, prisoners will be permitted--perhaps even encouraged--to collaterally attack these hearings through § 1983 actions, resulting in an erosion of the traditional deference accorded to prison officials by the federal courts.

Michigan provides ample methods for inmates to challenge prison misconduct proceedings. M.C.L. 791.254-791.255. In addition to federal habeas corpus, an administrative appeal and judicial review in the State courts were available to Petitioner, although he chose not to seek any review. Even if a misconduct punishment does not include loss of good time credits so that federal habeas review would not be possible, Michigan's procedures give inmates the opportunity for review and favorable termination of their misconduct determinations. This is not a situation where satisfying a favorable-termination requirement "would be

impossible as a matter of law," *Spencer v Kemna, supra*, 523 U.S. at 21 (Souter, J., concurring)

F. The Favorable Termination Requirement Is Not Subsumed By The Exhaustion Requirement Of The Prison Litigation Reform Act.

Petitioner argues that the exhaustion requirement for prison conditions cases in the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e(a), demonstrates that Congress did not intend a favorable termination requirement to apply to such cases. (Brief for Petitioner, p. 32). This argument is wrong as a matter of statutory construction and is completely beside the point.

The PLRA's exhaustion requirement "applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." *Porter v. Nussle*, 534 U.S. 516, 532 (2002). A prisoner seeking only money damages is required to exhaust his administrative remedies even if the relief offered by the administrative process does not include money damages. *Booth v. Churner*, 532 U.S. 731, 734 (2001).

This broad PLRA requirement that no § 1983 action shall be brought until administrative remedies are exhausted simply has no relevance to the question of whether a particular claim is subject to a threshold favorable termination requirement. When it enacted the PLRA, Congress did not codify the individual elements required for specific claims. Section 1983 only provides a remedy and does not itself create any substantive rights, *Chapman v. Houston Welfare Rights Organization*, 441 U.S. 600, 617-618 (1979), and the PLRA's exhaustion requirement is not triggered unless there is an underlying claim in the first place. Favorable termination is

necessary for a common law claim of malicious prosecution, which is the analog of the claim at issue in *Heck* and in the present case. In the context of a claim that necessarily implies the invalidity of a misconduct proceeding, a prisoner who fails to show favorable termination fails to state a claim upon which relief can be granted. just as a prisoner who fails to show deliberate indifference to serious medical needs fails to state an Eighth Amendment medical claim. In fact, 42 U.S.C. § 1997e(c)(2) permits courts to skip over the exhaustion analysis when there is a failure to state a claim:

> (2) In the event that a claim is, on its face, frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief, the court may dismiss the underlying claim without first requiring the exhaustion of administrative remedies.

The exhaustion requirement is independent from the favorable termination requirement. While exhaustion is a procedural requirement, favorable termination is a substantive requirement. True, Congress could have imposed a statutory favorable termination requirement, just as it could have statutorily defined immunity defenses and a statute of limitations. Its failure to do so, however, has no impact on this Court's jurisprudence that evaluates such concerns in defining the various § 1983 causes of action.

Favorable termination is a required element for claims that necessarily imply the invalidity of misconduct proceedings. Consequently, the PLRA's exhaustion requirement has no bearing on the favorable termination requirement, neither of which were satisfied by Petitioner. [10]

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[10] Respondent maintains that the district court erred when it denied his motion to dismiss for failure to exhaust administrative remedies under 42 U.S.C. § 1997e(a). Because Respondent ultimately prevailed on other

III. An Inmate Whose § 1983 Claim Necessarily Implies The Invalidity Of Prison Misconduct Proceedings Must Satisfy The Favorable Termination Requirement Even If He Is No Longer Confined To Administrative Segregation.

The favorable termination requirement is based upon the nature of the claim, not the type of punishment or the inmate's status at the time of bringing the claim. The rationale for the requirement is based upon the purposes of § 1983 viewed in the context of other statutes like 28 U.S.C. § 2254, and weighty policies like finality, consistency, the limitations on the types of constitutional litigation available to prison inmates, the nature of prison misconduct proceedings, the procedural protections available in such proceedings, and the type of review available. If the nature of a § 1983 claim is such that it necessarily implies the invalidity of the misconduct proceeding, the favorable termination requirement applies, whether the challenge is to the duration of confinement (loss of good time credits) or the conditions of confinement (punitive detention and loss of privileges). A prisoner challenging the validity of a misconduct proceeding that resulted in punishment affecting only the conditions of confinement is subject to the favorable termination requirement even if he is no longer subject to the conditions at the time he brings his § 1983 action.

The question of the inmate's status at the time of the challenge applies to the requirement of the federal habeas corpus requirement, 28 U.S.C. § 2241(c), that a prisoner be "in custody." A prisoner who has lost good time credits will be "in custody" for habeas corpus purposes until they are restored, regardless of whether he is in administrative segregation. A prisoner who is challenging only a sentence of administrative segregation is not "in custody" for habeas corpus purposes

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grounds, however, Respondent did not challenge the decision. Consequently, the issue is not before this Court.

since he is not challenging the fact or duration of his confinement. *Preiser, supra*; *Wolff, supra*. The question of custody is irrelevant to the question of whether the § 1983 claim necessarily implies the invalidity of the misconduct proceeding. "We think the principle barring collateral attacks--a longstanding and deeply rooted feature of both the common law and our own jurisprudence--is not rendered inapplicable by the fortuity that a convicted criminal is no longer incarcerated." *Heck*, 512 U.S. at 490 fn. 10.

The assumption underlying this question is that review of the misconduct violation would no longer be available upon the prisoner's release from administrative segregation. That is not the situation in Michigan, however. Punishment imposed at misconduct proceedings that affects conditions of confinement is typically temporary, and while the Michigan statute, administrative rule, and policy directive that control review of such proceedings have time limits, review does not depend on whether the inmate is still subject to the punishment when he seeks review.

If a Michigan prisoner disagrees with the result of a disciplinary hearing, he has 30 days to submit a request for a rehearing. (M.C.L. 791.254(3); P.D. 03.03.105 ¶ EE; Jt. App. 33). If the request for a rehearing is denied or the prisoner is not satisfied with the result, he can appeal to Michigan circuit court. (M.C.L. 791.255; P.D. 03.03.105 ¶ HH; Jt. App. 34). That appeal, which is in the form of a petition for judicial review, is then decided by a circuit court judge, who "may affirm, reverse or modify the decision or order or remand the case for further proceedings." M.C.L. 791.255(5). A prisoner has up to 60 days after the final administrative decision to file a petition for judicial review. M.C.L. 791.255(2). Importantly, both the administrative appeal and the petition for judicial review remain available even if a prisoner is released from administrative segregation.

Petitioner Muhammad's release from administrative segregation did not moot or otherwise preclude him from having his misconduct conviction reviewed. [11] The fact that Petitioner's misconduct conviction was not reviewed was due to Petitioner's voluntary choice not to seek review. Petitioner's lack of faith in the system does not excuse his failure to initiate proceedings that could have overturned his misconduct conviction.

The fact that the Petitioner did not seek to overturn his misconduct conviction through available remedies does not warrant a waiver of the favorable termination requirement in this case.

CONCLUSION

Because Petitioner's § 1983 claim necessarily implies the invalidity of his prison misconduct proceeding, and because the punishment he received in that proceeding affects the duration of his confinement, his action falls squarely within this Court's decisions in *Heck* and *Edwards*, and the favorable termination requirement applies to his claim.

Alternatively, Respondent submits that the favorable termination requirement applies to all § 1983 claims that necessarily imply the invalidity of prison misconduct proceedings, even those that affect only the conditions, and not the duration, of confinement. Application of the favorable termination requirement in such circumstances is faithful to the purposes of § 1983 and is consistent with this Court's

[11] Although Petitioner Muhammad could have sought review after he was released from administrative segregation back in 1997, review is now foreclosed because Petitioner did not seek review within the time limitations. But the issue of whether the statute of limitations or other time restrictions foreclose review is distinct from the issue of whether a prisoner's release from administrative segregation, by itself, forecloses review (which it does not).

jurisprudence since it recognizes legitimate and weighty policies like finality, consistency, the limitations on the types of constitutional litigation available to prison inmates, the nature of prison misconduct proceedings, the procedural protections available in such proceedings, and the type of review available.

Respondents request this Court to affirm the judgment of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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